

DOCKET FILE COPY ORIGINAL  
HOGAN & HARTSON  
L.L.P.  
**RECEIVED**

ORIGINAL

03-90

MAR 28 2003

COLUMBIA SQUARE

Federal Communications Commission  
Office of the Secretary

555 THIRTEENTH STREET, NW  
WASHINGTON, DC 20004-1109

TEL (202) 637-5600

FAX (202) 657-5910

WWW.HHLAW.COM

REDACTED - FOR PUBLIC INSPECTION

March 28, 2003

BY HAND DELIVERY

**RECEIVED**

MAR 28 2003

Federal Communications Commission  
Office of the Secretary

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> St., S.W.  
Washington, D.C. 20554

**Re: Qwest Communications International Inc.  
Application for Authority to Provide In-Region, InterLATA Services  
in Minnesota**

Dear Ms. Dortch:

Pursuant to Section 271 of the Telecommunications Act of 1996 and the Commission's *Public Notice*, "Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act," DA 01-734 (March 23, 2001) (re-released April 27, 2001), Qwest Communications International Inc., on behalf of itself and its subsidiaries, Qwest Corporation, Qwest LD Corp. and Qwest Communications Corporation (collectively, "Qwest"), submits herewith its Application for Authority to Provide In-region InterLATA Services in Minnesota (the "Application").

Qwest's submission contains the following items:

- An original and one paper copy of the Brief in support of the Application, its associated attachments, and Appendices A through E.
- One CD-ROM set in read-only format containing the Brief in support of the Application, its associated attachments, and Appendices A through E.
- Three CD-ROM sets in read-only format containing the archival portions of the Application (Appendices F through P).

For Office Use Only  
014

Ms. Marlene H. Dortch

March 28, 2003

Page 2

- One paper copy of each document containing confidential material, together with a letter identifying the confidential documents being submitted.

Concurrently herewith, Qwest is submitting under separate cover the following items to Janice Myles, Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street SW, 5-C 201, Washington, D.C. 20054:

- 12 copies of the entire Application in paper form.
- 12 CD-ROM sets in read-only format containing the entire Application.
- Two paper copies of each document containing confidential material, together with a copy of the letter, described above, identifying the confidential documents being submitted.

Also concurrently herewith, Qwest is submitting under separate cover the following items to Nancy M. Goodman, Chief, Telecommunications and Media Enforcement Section, Antitrust Division, Department of Justice, 1401 H. Street NW, Suite 8000, Washington, D.C. 20530:

- 8 copies of the entire Application in paper form
- 8 CD-ROM sets in read-only format containing the entire Application.
- One paper copy of each document containing confidential material, together with a copy of the letter, described above, identifying the confidential documents submitted with the Application.

Qwest also is providing copies of its Application in paper and CD-ROM form to the pertinent state regulatory authorities and the FCC's copy contractor, Qualex International. Qwest will make the Application available on its website, appropriately redacted to exclude confidential documents.

Inquiries regarding access to the confidential materials included in the Application should be directed to the following:

HOGAN & HARTSON L.L.P.

Ms. Marlene H. Dortch  
March 28, 2003  
Page 3

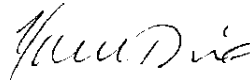
C. Jeffrey Tibbels  
Hogan & Hartson L.L.P.  
555 13<sup>th</sup> Street NW  
Washington, DC 20004  
tel: 202-637-6968  
fax: 202-637-5910

Finally, also enclosed is an extra copy of this letter to be stamped as received and returned via our messenger.

Questions concerning this submission should be directed to the undersigned.

Respectfully submitted,

Hogan & Hartson L.L.P.

By:   
Peter A. Rohrbach  
Mace J. Rosenstein  
Yaron Don

Counsel for Qwest Communications  
International Inc.

Enclosures

cc: Janice Myles  
Nancy Goodman  
Qualex International  
Minnesota Public Utilities Commission

DOCKET FILE COPY ORIGINAL ORIGINAL

FEDERAL COMMUNICATIONS COMMISSION

Washington, DC 20554

RECEIVED

MAR 28 2003

Federal Communications Commission  
Office of the Secretary

In the Matter of )

Qwest Communications )  
International Inc. )

WC Docket No. 03-90

Application for Authority to Provide )  
In-Region, InterLATA Services in Minnesota )

To: The Commission

**BRIEF OF  
QWEST COMMUNICATIONS INTERNATIONAL INC.  
IN SUPPORT OF APPLICATION FOR AUTHORITY TO PROVIDE  
IN-REGION, INTERLATA SERVICES IN MINNESOTA**

R. Steven Davis  
Dan L. Poole  
Andrew D. Crain  
John L. Munn  
Lynn A. Stang

Qwest Communications  
International Inc.  
1801 California Street  
Suite 4700  
Denver, CO 80202  
303-896-2794

Peter A. Rohrbach  
Mace J. Rosenstein  
Linda L. Oliver  
David L. Sieradzki

Hogan & Hartson L.L.P.  
Columbia Square  
555 Thirteenth Street NW  
Washington, DC 20004  
202-637-5600

Counsel for Qwest Communications  
International Inc.

March 28, 2003

No. of Copies rec'd 0+4  
LVA:APC/DH

## TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION AND EXECUTIVE SUMMARY	...2
I. THE MPUC HAS ENGAGED IN A RIGOROUS AND COMPREHENSIVE PROCESS TO EVALUATE QWEST’S APPLICATION FOR INTERLATA AUTHORITY IN MINNESOTA .....	4
II. QWEST IS ELIGIBLE TO SEEK INTERLATA RELIEF UNDER SECTION 271(C)(1)(A) .....	6
III. LOCAL MARKETS IN MINNESOTA ARE OPEN TO COMPETITION .....	9
A. Qwest’s Performance Indicator Definitions Reliably Test Its Provision of Service to Wholesale Customicrs .....	9
B. Qwest Meets the Requirements for Checklist Compliance in Minnesota .....	14
1. Checklist Item 1: Interconnection .....	14
a) Interconnccction Trunking.....	14
b) Collocation .....	18
2. Checklist Item 2: Access to Network Elements .....	25
3. Checklist Item 3: Access to Poles, Ducts, Conduits, and Rights-of-way .....	31
4. Checklist Item 4: Loops .....	34
5. Checklist Item 5: Unbundled Local Transport and Dark Fiber .....	42
6. Checklist Item 6: Unbundled Local Switching .....	47
7. Checklist Item 7: Access to 911, E911, Directory Assistance, and Operator Call Completion Services .....	48
8. Checklist Item 8: White Pages Listings .....	52
9. Checklist Item 9: Numbering Administration .....	54
10. Chcklist Item 10: Databases and Associaled Signaling .....	56

11.	Checklist Item 11: Local Number Portability.....	58
12.	Checklist Item 12: Local Dialing Parity .....	60
13.	Checklist Item 13: Reciprocal Compensation .....	62
<b>14.</b>	Checklist Item 14: Rcsalc .....	66
C.	Qwest Offers CLECs Nondiscriminatory Access to its Operations Support Systems .....	70
1.	Qwest's Regionwide OSS Satisfies the Requirements of Section 271 in Minnesota .....	70
2.	Qwest's OSS Performance .....	72
D.	Change Management and Technical Assistance.....	84
IV.	QWEST'S PRICES FOR UNBUNDLED NETWORK ELEMENTS ARE WITHIN OR BELOW THE RANGE PRODUCED BY THE FCC'S TELRIC METHODOLOGY .....	100
V.	QWEST WILL PROVIDE INTERLATA SERVICES IN COMPLIANCE WITH THE REQUIREMENTS OF SECTION 272 .....	102
A.	Qwest's Section 272 Affiliates .....	103
B.	Qwest Will Comply with Each of the Requirements of Section 272 .....	104
VI.	GRANT OF QWEST'S APPLICATION WILL PROMOTE COMPETITION IN BOTH THE LOCAL EXCHANGE AND INTEREXCHANGE MARKETS AND WILL SERVE THE PUBLIC INTEREST .....	111
A.	Grant of Qwest's Application is Consistent with Promoting Competition in Both the Local and Long Distance Markets .....	112
B.	Qwest <b>Has</b> Provided Adequate Assurances That the Local Exchange Market Will Remain Open to Competition After Section 271 Approval .....	115
C.	There Are No "Unusual Circumstances" That Would Make Long Distance Entry Contrary to the Public Interest. ....	117
	CONCLUSION .....	125

Attachment 1: Required Statements

Attachment 2: Verification and Certification

Attachment 3: Schedule of Pending Litigation

Attachment 4: Index to Electronic Documents

Attachment 5: Detailed Table of Contents and Appendices

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of )  
 )  
**Qwest Communications** ) **WC Docket No. \_\_\_\_\_**  
**International Inc.** )  
 )  
Application for Authority to Provide )  
In-Region, InterLATA Services in Minnesota )  
  
To: The Commission

**BRIEF OF**  
**QWEST COMMUNICATIONS INTERNATIONAL INC.**  
**IN SUPPORT OF APPLICATION FOR AUTHORITY TO PROVIDE**  
**IN-REGION, INTERLATA SERVICES IN MINNESOTA**

Pursuant to Section 271(d)(1) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Pub. L. No. 104-104, § 151(a), 110 Stat. 89 (“1996 Act” or “Act”), Qwest Communications International Inc. (“QCI”), on behalf of itself and certain of its subsidiaries, 1/ hereby submits this consolidated application for authority to provide interLATA interexchange service originating in the State of Minnesota. 2/

---

1/ The QCI subsidiaries that are parties to this application are Qwest Corporation (“QC”), Qwest LD Corp. (“QLDC”), and Qwest Communications Corporation (“QCC”) (collectively, and together with QCI, “Qwest”).

2/ A copy of this Application is available at <http://www.qwest.com/about/policy/ldReentry/Fed271>. QLDC and QCC each has received authority pursuant to Section 214 of the Act to provide international services originating in in-region states as Section 271 authority is granted for each state. See International Bureau Policy Division Grants Qwest Communications International Section 214 Authority for Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming, and Conditional Authority for Arizona, Minnesota, New Mexico, Oregon and South Dakota, Public Notice, DA 02-3598, FCC File No. ITC-214-20021009-00495 (Dec. 26, 2002) (granting international Section 214 authority to QLDC); International Authorizations Granted, Public Notice Report No. TEL-00644, DA 03-632, FCC File No. ITC-214-20030117-00022 (Mar. 6, 2003) (granting international Section 214 authority to QCC).



## INTRODUCTION AND EXECUTIVE SUMMARY

This application reflects and builds on Qwest's concerted and systematic efforts to bring the benefits of competition to all consumers in its region. The Commission has recognized and validated those efforts by granting Qwest's application for in-region, interLATA authority in nine of the 14 states in Qwest's service territory (the "Qwest III Application"). *See Memorandum Opinion and Order* in WC Docket No. 02-314 (Dec. 23, 2002) ("*Qwest 271 Order*"). Qwest's application for Section 271 authority in three additional states is pending (the "Qwest IV Application")

The instant application demonstrates that Qwest similarly has completed the statutorily required steps to open local exchange markets in Minnesota to competition, and that consumers there likewise will benefit from Qwest's entry into the long distance market. As shown below, the record here reflects the following:

- Both the manner in which Qwest provides the checklist items, and the Operations Support Systems ("OSS") used to deliver them in Minnesota, are substantially similar, if not identical, to those in the other Qwest states - and approved by the FCC in the *Qwest 271 Order*
- Qwest's OSS are handling commercial volumes and have been subject to, and passed, a rigorous independent third-party test administered under the auspices of the Regional Oversight Committee ("ROC") - and commended by the FCC in the *Qwest 271 Order*. <sup>3/</sup>
- Qwest's performance in provisioning checklist items in Minnesota is as good as, or better than, it was when the Qwest III and Qwest IV applications were filed - performance Found strong in the *Qwest 271 Order*.

---

<sup>3/</sup> The ROC is a consortium of state regulatory authorities throughout the Qwest region. The Commission specifically has recognized and commended "the work that Qwest has undertaken in conjunction with the ROC to develop, upgrade and test its OSS and processes in a collaborative manner with" CLECs. *Qwest 271 Order* ¶ 4.

- Qwest has proposed wholesale rates that comply with TELRIC principles - and are consistent with rates that the Commission previously has found meet the requirements of Section 271.
- Qwest has proposed a post-entry performance assurance plan that subjects Qwest to aggregate potential penalties of \$1 00 million annually - a plan that is virtually identical in form and substance to those in other states previously endorsed by the Commission.

This record has been fully developed in extensive proceedings before the Minnesota Public Utilities Commission ("MPUC") - with the benefit of broad participation by competitive local exchange carriers ("CLECs") and other interested parties in order to evaluate Qwest's satisfaction of the Section 271 criteria. <sup>4/</sup>

Qwest summarizes below how it meets each element of Section 271 in Minnesota. These matters are discussed in more detail in the Declarations attached hereto in Attachment 5, Appendix A, and supported by the record materials provided in Attachment 5, Appendices B-P. Section I of this brief describes the comprehensive process through which the MPUC developed a record of Qwest's satisfaction of Section 271. Section II explains why Qwest is eligible to seek interLATA authority under Section 271(c)(1)(A). Section III describes how Qwest meets each of the 14 checklist requirements of Section 271(c)(2)(B), including an explanation of the measures used to evaluate performance in this area. Section IV demonstrates that unbundled

---

<sup>4/</sup> The Minnesota commissioners generally are in agreement that Qwest has satisfied the competitive checklist elements and the requirements of Track A. Certain commissioners have reserved decision on Qwest's application, however, pending final action in the penalties phase of the MPUC's pending enforcement proceeding concerning Section 252 compliance issues. As discussed in Section VI.C below, Qwest takes these so-called "unfiled agreements" matters very seriously and has taken corrective action for past mistakes. But Qwest believes - and this Commission previously has concluded - that a backwards-looking enforcement proceeding is not grounds for withholding Section 271 authority going forward. Indeed, the Commission previously has concluded that precisely the type of remedial actions Qwest has undertaken in Minnesota with respect to the filing of CLEC contracts are sufficient under Section 271, and found in the Qwest III proceeding that residual issues arising from any past violations are properly framed in an enforcement proceeding - such as the one underway in Minnesota - not in a Section 271 docket. See *Qwest 271 Order* ¶ 466.

network elements and interconnection are priced consistently with applicable rules. Section V demonstrates that Qwest will provide services for which the authorization is requested in compliance with Section 272. Finally, in Section VI, Qwest reviews why grant of this Application is strongly consistent with the public interest,

**I. THE MPUC HAS ENGAGED IN A RIGOROUS AND COMPREHENSIVE PROCESS TO EVALUATE QWEST'S APPLICATION FOR INTERLATA AUTHORITY IN MINNESOTA**

State proceedings can “fulfill a vitally important role in the section 271 process.”

*Qwest 271 Order* ¶ 8. As we show below and in the Declaration of John Stanoch, Proceedings Before the Minnesota Public Utilities Commission, **Att. 5, App. A** (“Stanoch Decl.”), the MPUC, like its counterparts in the Qwest III and Qwest IV states, has exhibited “extraordinary dedication and creativity” in evaluating Qwest’s satisfaction of the requirements of Section 271, and “devoted a significant portion of [its] resources to [the Section 271] process over a number of years.” *Qwest 271 Order* ¶ 3.

As was the case with all the Qwest III and Qwest IV states, Minnesota is a participant in the ROC and has adopted and implemented the performance measures (performance indicator definitions, or “PIDs”) developed through the ROC. Minnesota also has relied upon the results of the Third Party Test of Qwest’s region-wide OSS. In fact, Edward Garvey, a former Chairman of the MPUC and currently the Deputy Commissioner for the Minnesota Department of Commerce (“MDOC”), was one of the three executive committee members responsible for overseeing the ROC testing process. Stanoch Decl. at 4

In addition to its participation in the ROC process, the MPUC conducted no fewer than seven separate but related dockets associated with Qwest’s Section 271 application, addressing, respectively, OSS- and non OSS-related checklist items; Section 272; Track A and

public interest issues; Qwest's Minnesota post-entry performance assurance plan (the "MPAP"); Qwest's Minnesota SCAT; and pricing. The MPUC referred **six** of the dockets to the Minnesota Office of Administrative hearings for contested case proceedings before administrative law judges ("ALJs"); it retained the MPAP docket for hearings directly before the MPUC. *See* Stanoch Decl. at 6-8. The ALJs conducted hearings during which the parties – including Qwest, CLECs and the MDOC - were afforded the opportunity to present testimony and engage in cross-examination, and to submit briefs, exceptions and other pleadings. *See id.* at 8-46. Thereafter, in response to a suggestion from the MDOC, in February 2003 the MPUC afforded all parties an additional opportunity to reach a negotiated resolution of outstanding disputed issues in the various dockets. *Id.* at 47.

On March 5 and 6, 2003, the MPUC heard arguments from the parties and deliberated on the recommendation it would make to this Commission. *Id.* at 47-48. The MPUC decided ultimately not to adopt a recommended decision in that hearing, but did provide guidance to Qwest regarding the views of each commissioner with respect to Qwest's Section 271 application. Each of the four sitting commissioners agreed that Qwest has satisfied Track A and checklist items 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13. Two commissioners concluded that Qwest also has satisfied checklist items 2 and 14. The other two commissioners expressed certain concerns, however, regarding the impact of the so-called "unfiled agreements" matter on Qwest's ability to submit accurate bills, DUF records, and wholesale performance data as it relates to resold products. In addition, three of the four commissioners reserved decision on Qwest's Satisfaction of the public **interest** component of Section 271 pending resolution in Minnesota of the penalty phase of the "unfiled agreements" proceeding. *Id.* at 47-57.

## II. QWEST IS ELIGIBLE TO SEEK INTERLATA RELIEF UNDER SECTION 271(C)(1)(A)

Qwest unquestionably satisfies Track **A** in Minnesota. *See* Declaration of David Teitzel, State of Local Exchange Competition, Track A and Public Interest Requirements (“Teitzel Decl.”), Att. 5, App. **A**. Thousands of residential and business customers in Minnesota currently obtain local telephone service from facilities-based CLECs, and several CLECs are serving both residential and business customers over their own facilities. <sup>5/</sup> *See generally* Teitzel Decl

The Commission has interpreted Track **A** to require a BOC to demonstrate four things: (1) that it has one or more binding agreements with CLECs that have been approved under Section 252 of the Act; (2) that it provides access and interconnection to unaffiliated competing providers of telephone exchange service; (3) that these competitors collectively provide telephone exchange service to residential and business subscribers; and (4) that these competing providers offer telephone exchange service either exclusively or predominantly over their own telephone service facilities (which include UNEs they lease from Qwest) or *via* resale. *See Michigan 271 Order*, 12 FCC Rcd at 20,577-99 ¶¶ 62-104.

---

<sup>5/</sup> *See* 47 U.S.C. § 271(c)(1)(A). A CLEC’s “own facilities” includes the use of leased unbundled network elements (UNEs). *See Michigan 271 Order*, 12 FCC Rcd at 20,598 ¶ 101. The Commission recently has provided helpful guidance regarding the “more than *de minimis*” standard of competition. *See New Jersey 271 Order*, 17 FCC Rcd at 12281-83 ¶¶ 11-13 & nn.33, 41; *Vermont 271 Order*, 17 FCC Rcd at 7629-31 ¶¶ 10-12 & n.28. In New Jersey, a state with a population in excess of 8 million people, three CLECs provided a total of approximately 2,200 facilities-based residential access lines. *New Jersey 271 Order* at n.33. The Commission determined that the presence of any one of these three CLECs, taken alone, would satisfy Track **A**. *Id.* at n.41. In other words, one CLEC with no more than 733 residential facilities-based access lines was found to be sufficient to meet the Track **A** “more than *de minimis*” standard for New Jersey. Furthermore, the Commission held that the 345 residential customers served by CLECs in Vermont satisfied the “more than *de minimis*” standard of competition. *See Vermont 271 Order*, 17 FCC Rcd at 7630-31 ¶ 11 & n.28.

***Binding Agreements Under Section 252.*** Qwest has “entered into one or more binding agreements that have been approved under Section 252 specifying the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities. . . .” 47 U.S.C. § 271(c)(1)(A). Specifically, as of December 31, 2002, the MPUC had approved 173 interconnection agreements – 113 wireline and 60 resale, wireless, paging and EAS. Another 23 agreements (including wireline, resale, wireless, paging and EAS agreements) were awaiting approval. *See* Teitzel Decl. at 6 and Exh. DLT-Track A/PI-MN-1 (Minnesota Wholesale Volumes Data Report); *see also* Att. 5, **App. L** (Qwest’s state-approved interconnection agreements with CLECs in Minnesota). Accordingly, Qwest meets the first criterion of Track A. No party challenged Qwest’s compliance with this element in the Minnesota state proceeding

***Access to Unaffiliated Competing Providers.*** Qwest is providing access to UNEs and interconnection facilities to a significant number of unaffiliated competing providers of telephone exchange service in Minnesota. Specifically, as of December 31, 2002, Qwest provides 106,827 stand-alone unbundled loops to 26 CLECs and 84,428 UNE-Ps to 17 CLECs in Minnesota. <sup>6/</sup> *See* Teitzel Decl. at 8 and Exh. DLT-Track A/PI-MN-1 (Minnesota Wholesale Volumes Data Report); *see also* Exh. DLT-Track A/PI-MN-3. Further, as of December 31, 2002, Qwest has completed 651 CLEC collocations and is providing 173,012 local interconnection trunks in order for CLECs to access and interconnect with Qwest’s network. *See*

---

<sup>6/</sup> This figure includes 54,980 “traditional” UNE-P combinations and 29,448 UNE Star combinations.

Teitzel Decl. at 8. Thus, Qwest meets the second criterion of Track **A**. No party challenged Qwest's compliance with this element in the Minnesota state proceeding. 7/

***Competitive Service to Residential and Business Subscribers.*** CLECs collectively are providing telephone exchange service to significant numbers of residential and business subscribers in Minnesota. Specifically, *individual* CLECs such as AT&T, McLeodUSA, HickoryTech, Integra and Northstar Access serve both residential and business customers in Minnesota. *See* Teitzel Decl. at 9.

Only the CLECs have full information on their facilities bypass activities. 8/ While Qwest can actually measure and track the number of stand-alone unbundled loops, UNE-P lines 9/ and resale lines that it provisions to CLECs (as well as LIS trunks in service, numbers ported to CLECs by Qwest customers, CLEC white pages listings and CLEC E-911 listings), Qwest still must estimate the total number of access lines served *via* CLEC-owned facilities, except when the CLECs voluntarily disclose the actual number of lines served *via* CLEC-owned facilities. Consistent with other Section 271 applications previously approved by this Commission, Qwest uses data from both E-911 database listings and LIS trunks to estimate the number of CLEC access lines in service in Minnesota.

Based on data from the E-911 listing database, which contains 527,748 listings (402,411 business and 125,337 residential) for lines served by CLECs via stand-alone unbundled loops and CLEC-owned facilities, Qwest estimates that, as of December 31, 2002, CLECs had 677,003 access lines in service in Minnesota. *See* Teitzel Decl. at notes 24-25 and

---

7/ A comprehensive list of unaffiliated CLECs currently active in Minnesota is attached to the Teitzel Declaration. *See* Teitzel Decl. Exh. DLT-Track A/PI-MN-3.

8/ CLEC facilities-bypass, as used in this brief, is a subset of facilities-based competition that only includes CLEC-owned facilities. It does not include UNEs.

9/ UNE-Platform line counts include all UNE-P offerings.

accompanying chart. Based on the number of LIS trunks in service in Minnesota – 173,012- Qwest estimates that, as of December 31, 2002, CLECs had 625,038 access lines in service in Minnesota. See *id.* at note 27 and accompanying chart

***Service Either Exclusively or Predominantly Over Competitor Owned Facilities in Combination with Resale.*** Several CLECs are providing service either exclusively over “their own telephone exchange service facilities,” as the Commission has defined that phrase, or in combination with resale in Minnesota. Specifically, multiple carriers in Minnesota have leased unbundled loops from Qwest, which are deemed the CLECs’ “own . . . facilities” under the Commission’s rules. See *Michigan 271 Order*, 12 FCC Rcd at 20598 ¶ 101. As of December 31, 2002, 26 CLECs had 106,827 stand-alone unbundled loops in service in Minnesota. Additionally, 17 CLECs had 84,428 UNE-Platform lines in service. See Teitzel Decl. at 18-19 CLECs also had 64,827 resold access lines (16,062 business and 48,765 residential) in service in Minnesota. See *id.* at 19.

## **111. LOCAL MARKETS IN MINNESOTA ARE OPEN TO COMPETITION**

### **A. Qwest’s Performance Indicator Definitions Reliably Test Its Provision of Service to Wholesale Customers**

#### **1. The PIDs Were Developed in a Collaborative Process**

The FCC has strongly endorsed performance standards negotiated through open, collaborative processes. <sup>10/</sup> Qwest, the state regulatory authorities throughout Qwest’s region and CLECs and other interested parties drafted the PIDs that measure Qwest’s performance in

---

<sup>10/</sup> When parity and benchmark standards are developed in open proceedings, with input from the incumbent and competing carriers, the standards “represent informed and reliable attempts to objectively approximate whether competing carriers are being served by the incumbent in substantially the same time and manner, or in a way that provides them a meaningful opportunity to compete.” *Qwest 271 Order*, App. K ¶ 8.



precisely that manner, and the Commission previously has found that Qwest's PIDs accurately measure its provision of wholesale service to CLECs. *Qwest 271 Order* ¶¶ 9-13. Since January 2000, the ROC's Technical Advisory Group ("TAG"), with input from Qwest, intervening parties, and state commission staffs, has continually refined the PIDs to ensure they accurately measure wholesale service performance. On June 13, 2002, with the Arizona TAG's acceptance of the definitions in ROC PID version 5.0, subject to Arizona-specific standards in a few cases, Qwest has created 14-State PID version 5.0 to replace the previously separate versions for Arizona and the ROC. The 14-State version applies throughout Qwest's region and is the most comprehensive body of measurements developed to date. <sup>11/</sup> See Williams Decl. ¶¶ 14-18

The ROC TAG adopted performance indicators for each checklist item that is susceptible to evaluation with performance data. The PIDs, which address Checklist Items 1, 2 (including OSS), 4, 5, 7-11, 13 and 14, are grouped into categories, such as Ordering and Provisioning (OP) and Maintenance and Repair (MR). Those two categories account for the vast majority of Qwest's performance results. <sup>12/</sup> The core performance metrics are as follows:

- **GA-1 through GA-6** – measure the percentage of scheduled time Qwest's electronic interfaces are available for CLEC use.

---

<sup>11/</sup> The 14-State version is the same as ROC PID version 5.0 except that it shows state-specific performance standards for Arizona and Colorado under certain metrics. The 14-State version appears in Attachment 5, Appendix D.

<sup>12/</sup> In August 2001, Qwest proposed additional, modified "\*" versions of three metrics relating to trouble reports, OP-5, MR-7 and MR-8, given that Qwest often finds the service which may have generated a trouble report is in fact functioning properly. These "\*" PIDs exclude trouble reports for which Qwest both finds no problem and has no additional trouble report for the next 30 days. (As a result of the latter criterion, performance results under OP-5\*, MR-7\* and MR-8\* lag a month behind their corresponding PIDs.) Though the TAG did not reach agreement on the "\*" PIDs, Qwest reports these results because they can help explain apparent performance disparities and thereby demonstrate Qwest is satisfying checklist requirements because the apparent disparities are not due to discrimination. See *Kansas/Oklahoma 271 Order*, 16 FCC Rcd 6237 ¶ 31; see also *Qwest 271 Order* ¶ 354 n.1286 ("[W]e find it appropriate to consider the adjusted results from the modified [\*] PIDs as part of Qwest's performance data.").

- PO-5 evaluates the extent to which Qwest provides CLECs with timely FOC notification.
- OP-3 – measures the percentage of orders that Qwest installs on or before the scheduled due date.
- OP-4 - tracks the average time it takes Qwest to install a service, measured from the time Qwest receives a complete and accurate LSR/ASR.
- OP-5 – assesses the percentage of new orders that are trouble free for 30 days following installation.
- OP-6 – evaluates the average number of business days that delayed orders are completed beyond the applicable due date for reasons attributable to Qwest.
- MR-3, MR-4, MR-5 – measure the percentage of repairs completed within certain intervals (24, 48, and 4 hours, respectively).
- MR-6 - tracks the average time it takes to restore service.
- MR-8 – measures the number of trouble reports as a percentage of the total installed base of each service.
- MR-9 – measures the extent to which repairs restore service by the appointed date and time.

Most of the OP and MR measurements disaggregate results to show performance in urban areas (“Zone 1” or “within MSA”) and rural areas (“Zone 2” or “outside MSA”).

Although the parties agreed to the Zone and MSA disaggregations, the FCC prefers to review statewide performance results. See *Qwest 271 Order*, App. B-J. Accordingly, Qwest also is submitting herewith statewide average summaries that show only statewide totals for each PTD. See Att. 5, App. D.

## **2. Independent Audits Have Verified The Reliability of Qwest’s Performance Reports**

As noted above, the Commission has confirmed the reliability of Qwest’s performance reports. *Qwest 271 Order* ¶ 13, nn.26-27. The Commission reached this

conclusion based on the ROC's retention of Liberty to audit Qwest's performance results. *Id.* For each PID, Liberty (1) examined Qwest's data collection systems to ensure that Qwest was accurately capturing, calculating, and reporting performance results; (2) conducted an end-to-end analysis of sample data sets to verify that the data collection systems worked as designed; and (3) independently calculated performance results to corroborate Qwest's results. In its final report, issued on September 25, 2001, Liberty concluded that "the audited performance measures accurately and reliably report actual Qwest performance." <sup>13/</sup> Liberty conducted supplemental reviews on some metrics to review mechanization of measurement production or code changes approved by the TAG. Additionally, Liberty audited new measurements introduced after completion of the original audit. In all cases, Liberty's additional reviews verified that the measurements were reliable. <sup>14/</sup>

Separately, but equally relevant here, the Arizona Corporation Commission's ("ACC") retained Cap Gemini Ernst & Young ("CGE&Y") to audit Qwest's performance results under the Arizona PIDs, which were nearly identical to the ROC PIDs. <sup>15/</sup> Qwest's systems for tracking and reporting performance in the ROC states and Arizona likewise are identical. On December 21, 2001, CGE&Y issued its final report, which concluded that "Qwest's performance

---

<sup>13/</sup> Liberty Report at 2-3. The Liberty Report is included in Att. 5, App. D

<sup>14/</sup> Liberty's Supplemental Reports are included in Att. 5, App. D

<sup>15/</sup> At the time of the CGE&Y audit, the ROC and Arizona had only two PIDs that were not identical: PO-15, Number of Due Date Changes per Order, and OP-I 5, Interval for Pending Orders Delayed Past Due. Arizona's PO-5 PID divided what the ROC measured in PO-5B into two parts: (1) a modified PO-5B (FOCs for electronic/manual, non-flow-through-eligible LSRs) and (2) PO-5E (FOCs for failed flow-through electronic/manual LSRs). In addition, for some measurements that otherwise used the same definition as in the ROC, the Arizona performance standards were slightly different. In all other respects, the two sets of PIDs were virtually identical. Currently, the only states with state-specific standards, and for only a few measures, are Arizona and Colorado.

measure systems and processes . . . were substantially in compliance with the requirements of the Arizona PID for the months included within the audit for each particular measure.” *Id.* at 22.

**3. Data Reconciliation Processes Further Support the Reliability of Qwest’s Data**

Further support for the Commission’s conclusions regarding Qwest’s performance metrics was found in the retention by the ROC and the ACC of Liberty to resolve inconsistencies between data collected by CLECs and Qwest’s reported performance results. *Qwest 271 Order* ¶ 13. Three CLECs – AT&T, WorldCom, and Covad – asked Liberty to reconcile certain aspects of their data with Qwest’s reported performance results. The CLECs identified the specific metrics, products, and states targeted for data reconciliation. Liberty issued data reconciliation reports for Arizona, Colorado, Minnesota, Nebraska, Oregon, Utah and Washington; the reconciliation process however, pertained equally to all states in the Qwest region. In the course of the data reconciliation process, Liberty issued one Exception Report and 13 Observation Reports concerning inconsistencies in the data. Williams Decl. ¶ 10.

After carefully reviewing corrective measures implemented by Qwest, Liberty closed each Report as resolved. In its final report, Liberty concluded that “Qwest’s performance reporting accurately and reliably report Qwest’s actual performance.” *Id.* The Commission has relied on those reports in assessing whether Qwest is meeting the requirements of the competitive checklist in Section 271. *See, e.g., Qwest 271 Order* ¶ 88. The Commission also agreed with Qwest that later data reconciliation of Qwest’s OP-5 metric by CGE&Y established that there were relatively minor issues with OP-5 (most of which were known to the parties and are in the process of being resolved) and that, in any event, Qwest’s reported results for CLECs changed only slightly when recalculated and were still higher than the results for Qwest’s retail orders. *See id.* ¶ 105; *see also* Williams Decl. ¶¶ 61-63. Nevertheless, Qwest instituted

refinements in the measurement programming for OP-5 that resolve nearly all issues addressed in the reconciliation, effective in revised reporting of November 2002 results. *See id.*

**B. Qwest Meets the Requirements for Checklist Compliance in Minnesota**

Qwest demonstrates below that, for each checklist item, the terms of its Statement of Generally Available Terms (“SGAT”) 16/ and/or interconnection agreements 17/ obligate it to provide the item in a manner that complies with the statute and with the FCC’s rules, policies, and precedents regarding that item. In addition, Qwest demonstrates both (a) that it is furnishing (or that it stands ready to furnish) the item in reasonable, commercial quantities, and (b) that it is doing so at an acceptable level of quality.

**1. Checklist Item 1: Interconnection**

**a) Interconnection Trunking**

Interconnection is “the physical linking of two networks for the mutual exchange of traffic.” 47 C.F.R. § 51.5; *Local Competition First Report and Order*, 11 FCC Rcd at 15590 ¶ 176; *Qwest 271 Order*, App. K ¶ 17. Qwest has a concrete and specific legal obligation to provide interconnection pursuant to Section 7.0 of its Minnesota SCAT, which requires Qwest to

---

16/ The SGAT is Qwest’s standard wholesale contract offer, which provides competitors with the rates, terms and conditions to which Qwest commits to adhere in the provisioning of Checklist Items. Upon request to Qwest, CLECs may incorporate terms from the SCAT into their negotiated agreements. *See* 47 U.S.C. § 252(i). *See* SCAT § 1.8.

171 Appendix L contains the state-approved interconnection agreements that Qwest has entered into with CLECs in the state of Minnesota as of March 1, 2003. It should be noted that, for purposes of the Section 271 proceedings in Minnesota, the MPUC required Qwest to rely on interconnection agreements rather than on the Minnesota SGAT. Because CLECs have opted in to Qwest’s Minnesota SGAT, the SGAT has been converted to a state-approved interconnection agreement. Qwest refers to SGAT opt-in interconnection agreements as SGAT-Based Interconnection Agreements. This application relies on the most recent version of the Minnesota SGAT, which was filed by Qwest on March 17, 2003, and the SCAT-Based Interconnection Agreement with New Edge Networks, which is an opt-in to the October 1, 2001 Minnesota SGAT. Unless otherwise noted, references to SGAT language and section numbers in this Declaration also refer to the SGAT-Based Interconnection Agreements.

make interconnection available at reasonable rates on a nondiscriminatory basis. *See* Declaration of Thomas R. Freeberg, Interconnection (“Freeberg Interconnection Decl.”), Att. 5, App. A, ¶ 14. Qwest also has a concrete, specific legal obligation to provide interconnection pursuant to interconnection agreements approved by the MPUC. The MPUC has completed a review process in which the ALJ found that Qwest provides CLECs with interconnection on a nondiscriminatory basis in compliance with Section 271. *Id.* ¶¶ 56-67; *Minnesota PUC ALJ Recommendations for Checklist Items 1, I, 4, 5, 6, 11, 13, and 14* at 104. In addition, the Commission previously has determined that Qwest meets the requirements of Checklist Item 1. *Qwest 271 Order* ¶ 312.

Qwest provides interconnection (1) “at any technically feasible point” within its network; (2) “that is at least equal in quality” to the connections Qwest provides to itself; and (3) “on rates, terms and conditions that are just, reasonable and nondiscriminatory.” *See* 47 U.S.C. §§ 271(c)(2)(B)(i), 251(c)(1). CLECs exchange a variety of traffic with Qwest over interconnection trunks - including local, toll, directory assistance, operator services, information access, and 911 - at each of the six feasible points of interconnection identified by the Commission. *See* 47 U.S.C. § 251(c)(2)(B); 47 C.F.R. § 51.305(a)(2); SGAT §§ 7.1.1, 7.2.1.2, 7.2.2.9.3. To ensure nondiscrimination, Qwest provisions CLEC interconnection trunks with the same equipment, technical criteria, and service standards that Qwest uses for its own trunks. Freeberg Interconnection Decl. ¶ 10.

Qwest arranges interconnection trunking through (1) a DS1 or DS3 entrance facility provided by Qwest; (2) physical or virtual collocation; (3) negotiated mid-span meet point of interconnection (“POI”) facilities; and (4) other technically feasible methods of

interconnection. In each LATA, Qwest allows CLECs to choose a single, technically feasible point for interconnection. SGAT § 7.1.2

The process by which facilities-based CLECs order interconnection with Qwest's network is straightforward and well established. Qwest's wholesale website provides checklists, forms, explanations, and flow charts that explain the interconnection process in detail. *See* [www.qwest.com/wholesale/clecs/clec\\_index.html](http://www.qwest.com/wholesale/clecs/clec_index.html). In the third-party OSS test, KPMG thoroughly reviewed the processes, systems, and tools that Qwest employs to facilitate interconnection. In its final report, KPMG concluded that Qwest satisfied all of the evaluation criteria for interconnection. *See* Att. 5, App. F, KPMG Final Report at 481, 484-87, 501-07.

**(1) Qwest Is Provisioning, Maintaining, and Repairing Interconnection Trunks in Accordance with Negotiated Performance Metrics**

The Commission has identified trunk group blockage as an indicator of whether an incumbent LEC provisions interconnection trunks "equal-in-quality" to the incumbent's own trunks. *Qwest 271 Order*, App. K ¶ 18. In assessing whether an incumbent LEC services CLECs in a manner no less efficient than the way it provides the comparable function to its own retail operations, the Commission has focused on an incumbent LEC's installation and repair intervals. *Id.* ¶ 19.

**(2) Performance**

**(a) Trunk Provisioning**

The PIDs require Qwest to track the percentage of time it installs a CLEC-requested trunk on or before the agreed due date ("commitments met") and the average installation interval. *See* Williams Decl. ¶ 73. Qwest also tracks the average number of days installations were delayed due to lack of facilities and for non-facilities reasons, and the

percentage of new installations as to which no trouble reports were filed within 30 days

(“installation quality”). *Id.* 18/

The percentages of CLEC installation commitments met were at parity with retail in October 2002 through January 2003. *Id.* ¶ 75. Qwest met on average 97.1% of its installation commitments to CLECs October through January, and wholesale and retail average installation intervals were at parity in each month. *Id.* Only one CLEC installation was delayed due to lack of facilities, and there was no disparity between wholesale and retail delays for non-facility reasons. Installation quality was excellent: better than 97.9% of new trunks were installed without a CLEC filing a trouble report within 30 days in October through January with an average of 98.2% trouble free new installations in all four months. *Id.*

#### **(b) Trunk Repair**

The TAG also adopted specific performance measures for maintenance and repair of interconnection trunks. These include the overall trouble report rate, the percentage of trouble reports cleared within four hours, and the mean time to restore service. Williams Decl. ¶ 74. Qwest’s performance under these PIDs has been outstanding.

The CLEC trouble report rate was outstanding by any standard, at 0.01% or less in each of the past four months, and at parity with retail in all four months. *Id.* ¶ 77. Qwest cleared 100% of CLEC trouble reports within four hours in three of the last four months and in parity with retail in all four months. The average repair interval was at parity with retail in all

---

18/ Unless otherwise noted, all performance data cited herein with respect to Qwest’s provisioning of checklist elements are for the period October 2002 through January 2003, the most recent four-month period for which data are available as of the date of this application. This time period is sometimes referred to herein as “the last four months.” All citations are to the FCC version of Qwest’s performance reports, which appear in Attachment 5, Appendix D.



but one month and the four month average was just three minutes longer than retail. *Id.* CLEC repeat trouble rdts also were also at parity with retail. *Id.*

**(c) Trunk Blockage**

The ROC TAG set a performance benchmark of one percent or less for trunk blockage. *See Williams Decl.* ¶ 75. Blockage is measured on (1) interconnection final trunk groups that connect CLEC end offices with Qwest tandems, and (2) interconnection final trunk groups that directly connect CLEC end offices with Qwest end offices

Qwest's performance in controlling blockage has been outstanding. Trunk blockage on CLEC interconnection to Qwest tandem offices was 0.05% or less in each month and 0.00% in two of four months. *Id.* ¶ 77. Blockage for interconnection to Qwest end offices was 0.00% the last two months and 0.04% or less in the two months prior to that. *Id.*

Qwest has fulfilled significant CLEC demand for interconnection. As of December 31, 2002, CLECs had almost 174,000 interconnection trunks in service in Minnesota. Regionwide, more than one million local interconnection trunks are in service. Freeberg Interconnection Decl. ¶ 7. Qwest's performance under all of the measures applicable to interconnection is consistently strong. These results demonstrate conclusively that Qwest provisions interconnection trunks to CLECs on a nondiscriminatory basis.

**b) Collocation**

Qwest offers collocation as one means for CLECs to obtain interconnection and access to network elements on an unbundled basis. *Qwest 27/ Order* ¶ 314 ("We conclude that Qwest meets its collocation obligations."); *see also* Declaration of Margaret S. Bumgarner, Collocation ("Bumgarner Collocation Decl."), Att. 5, App. A. The Commission has found that Qwest's processes and procedures ensure that collocation arrangements are available on just, reasonable, and nondiscriminatory terms and conditions in accord with Section 251(c)(6) of the